SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969

NO. 904

CONTINENTAL OIL COMPANY, ATLANTIC RICHFIELD COMPANY, GETTY OIL COMPANY, and CITIES SERVICE OIL COMPANY,
Petitioners

v.

THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION, LTD.,
Respondent

RESPONDENT'S OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

GEORGE W. RENAUDIN
Counsel for Respondent

Of Counsel:

DAVID B. CONNERY, JR.
ROYSTON RAYZOR & COOK
877 San Jacinto Building
Houston, Texas 77002

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

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STATUTES AND TREATIES INVOLVED

In addition to the statutes set forth in the Petition, Respondent would add the following:

1. The Outer Continental Shelf Lands Act, c. 345, Section 3, 67 Stat. 462, 43 U.S.C., Section 1332(a)(b).

(a) It is declared to be the policy of the United States that the subsoil and seabed of the Outer Con-

tinental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

2. The Convention on the High Seas, 13 U.S. Treaties 2312, Articles 1 and 2:

ARTICLE 1

The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.

ARTICLE 2

The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal States:

(1) Freedom of navigation;
(2) Freedom of fishing;
(3) Freedom to lay submarine cables and pipelines;
(4) Freedom to fly over the high seas.

These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.

3. The Convention on the Continental Shelf, 15 U.S. Treaties 471, Articles 1 through 7. The entirety of Articles 1 through 7 is printed in Appendix "A", *infra*, pp. 13-16. Some of the more pertinent portions are as follows:

ARTICLE 3

> The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

ARTICLE 5

* * *

> 2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

* * *

> 4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

QUESTION PRESENTED

In a maritime collision case involving a merchant vessel and a fixed structure on the Outer Continental Shelf, an area of limited but exclusive federal jurisdiction and control, in which the injured party properly invokes the admiralty and maritime jurisdiction, complete and ade-

quate in remedy, is there any gap, void, or other basis in the applicable federal law which requires or permits resort to the local law of Louisiana, specifically Louisiana's Direct Action statute, under the adoption of state law provision of the Outer Continental Shelf Lands Act?

REASONS FOR DENYING THE WRIT

The discretionary jurisdiction of this Court by certiorari need not be, and should not be, exercised in a case in which a Court of Appeals, not in conflict with any other Court of Appeals, applied the guidelines and principles set out by this Court in its determination of a choice of law problem. *Rodrigue, Et Al v. Aetna Cas. & Sur. Company, Et Al,* 395 U.S. 352 (June 9, 1969).

While Petitioner asserts that serious issues were not decided by this Court in *Rodrigue,* yet its guidance, as adopted by the Court of Appeals in the instant case neither decides nor forecloses from further resolution the myriad hypothetical situations which can readily be envisioned to arise on artificial islands and fixed structures on the Outer Continental Shelf. It could not be otherwise, because the Court of Appeals, in the instant case, as in the problem before this Court in *Rodrigue,* did not undertake to assay or decide issues not then before it.

Giving effect to the overall purpose of the Outer Continental Shelf Lands Act, in context with its international ramifications, and with explicit regard for international law as contained in the Convention on the High Seas and the Convention on the Continental Shelf, the Court of Appeals in the instant case held, as *Rodrigue* held:

1. That the federal law properly applies, and that the applicable federal law is the admiralty law, complete in substance and remedy.

2. Inasmuch as the federal law, the admiralty law, complete in and of itself in substance and remedy was applicable, yielding no gap, void, or other basis upon which initially to address any inquiry to the law of the landlocked enclave of the coastal state of Louisiana, the Court recognized as this Court did in *Rodrigue,* that the limited extension of United States jurisdiction and control to the Outer Continental Shelf was for purposes wholly distinct and apart from those applicable to the resolution of a simple admiralty collision case.

3. Thus according superiority to the federal law, as the Outer Continental Shelf Lands Act requires, and finding no necessity therefore to resort to any but the applicable federal law, the Court of Appeals properly concluded that any question of inconsistency as between potentially adoptable state law and the federal law was unecessary, a determination in all respects consistent with the Outer Continental Shelf Lands Act, the referred to International Conventions, and this Court's holding in *Rodrigue.*

Thus, the conclusions and holding of the Court of Appeals in this case are not in conflict with, but rather are based entirely upon the touchstone inquiry as stated by this Court in *Rodrigue* with respect to the reasons for the enactment of the "surrogate federal law"—adoption of state law provision, as follows:

"Since federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented gaps in the federal law with state law through the 'adoption of state law as the law

of the United States'." 395 U.S. ____, 23 L.Ed.2d 365.

Therefore, the reasoning and analysis of this Court in *Rodrigue* are adhered to fully, and it will be soon enough for this Court to decide hypothetical questions of important federal law when, and if, they are indeed presented and present in litigation.

An examination of certain pertinent observations of this Court in the *Rodrigue* case reflects that the Fifth Circuit followed the guidelines and principles of *Rodrigue*, applying them as it directed to the fact situation of the case *sub judice*, reflecting the clear distinction between social problems intramural to the platform and the exploration for oil in the seabed, as opposed to the very different relationships encountered with the intervention of a "foreigner" to such activity such as Respondent herein who was merely using international waters, with a further recognition by the Fifth Circuit of the limited role of state law in the scheme of the Lands Act:

> "The Lands Act makes it clear that federal law, supplemented by state law of the adjacent State, is to be applied to these artificial islands as though they were federal enclaves in an upland State . . . . This was done in part because *men working on these islands are closely tied to the adjacent State, to which they often commute and on which their families live, unlike transitory seamen to whom a more generalized admiralty law is appropriate.*" 395 U.S. ____, 23 L.Ed.2d 364 (Emphasis supplied)
>
> * * *
>
> "Under Section 4, the adjacent State's laws were made 'the law of the United States for (the relevant

subsoil and seabed) and artificial islands and fixed structures erected thereon,' *but only to 'the extent that they are applicable and not inconsistent with . . . other Federal laws.'* It is evident from this that federal law is 'exclusive' in its regulation of this area, and that state law is adopted *only* as surrogate federal law." 395 U.S. ____, 23 L.Ed.2d 365 (Emphasis supplied)

"Paragraph (2) adopts State law as Federal law, to be used when Federal statutes or regulations of the Secretary of the Interior are inapplicable. *This language makes it clear that state law could be used to fill federal voids.*" 395 U.S. ____, 23 L.Ed.2d 365 (Emphasis supplied)

"Industrial accidents, accidental deaths, peace, and order present problems requiring a body of law for their solution."

* * *

". . ., but that where there is a void, the State law *may* be applicable . . ."

"The opponents of the Act realized full well that state law was being used only to supplement federal law, . . ." 395 U.S. ____, 23 L.Ed.2d 366 (Emphasis supplied)

"But when the damage is caused by a vessel admittedly in admiralty jurisdiction, the Admiralty Extension Act (46 U.S.C., Sec. 740) would now make applicable the admiralty remedy in any event."

* * *

"The accidents in question here (industrial accidents to platform workers) involve no collision with a vessel, . . ., and the accidents had no more connection with the ordinary stuff of admiralty than do accidents on piers." (Insert added) . . . "In these circumstances, the Seas Act—which provides an

> action in admiralty—clearly would not apply under conventional admiralty principles and, *since the Lands Act provides an alternative federal remedy through adopted state law, there is no reason to assume that Congress intended to extend those principles to create an admiralty remedy here.*" 395 U.S. ____, 23 L.Ed.2d 367.

Thus the whole thrust is that where an admiralty remedy exists there is no need under the Lands Act to look further to adjacent State law, a device used only to fill "voids" or "gaps" in existing Federal law which do not exist in a case involving a collision between a ship and a platform, for herein there is an "admiralty remedy in any event."

"Careful scrutiny of the hearings . . . convinces us . . . (of) the view that maritime law was inapposite to these fixed structures." 395 U.S. ____ 23 L.Ed.2d 368. This quotation refers to the initial attempts by Congress to place a platform in the position of a vessel. However, since admittedly admiralty law here applies, a ship collision case changes the entire outlook when it is recognized that *Rodrigue* sought to set forth principles applicable solely to the social type legislation necessary to regulate the relationship of the persons involved in the oil exploration only, but recognizing the distinction presented when a ship collides with a platform.

> "One theme running throughout the hearings was the close relationship between the workers on the islands and the adjoining states."
>
> "Thus the admiralty jurisdiction under the Seas Act no more applies to these accidents *actually occurring on the islands* than it would to accidents occurring in an upland federal enclave, etc. . . . At a minimum, the legislative history shows that

> accidents *on these structures*, which under maritime principles would be no more under maritime jurisdiction than accidents on a wharf located above navigable waters, were not changed in character by the Lands Act. Since the inapplicability of the Seas Act removes any obstacle to the application of state law by incorporation as federal law through the Lands Act, the decisions below are reversed." 395 U.S. ____, 23 L.Ed.2d 370 (Emphasis supplied)

Accordingly it is first necessary to remove the applicability of the federal law by this Court's decision in *Rodrigue* before reaching the "application of state law" by incorporation through the Lands Act. Here such inapplicability of federal law is non-existent since federal admiralty law is clearly recognized by the parties hereto as well as this Court's opinion in *Rodrigue* to control as opposed to the inapplicability of federal law (specifically admiralty law and the Seas Act) in *Rodrigue*.

These four major oil companies are in effect merely seeking additional rights to which they would not even have a color of a claim were their platform situated on any part of the Continental Shelf except off of one state—Louisiana. Their back door approach through the Lands Act to reach the Direct Action Statute of this one state is an effort to use a statute enacted basically for the aid of auto accident victims ashore in Louisiana who could not readily obtain redress for their injuries from the other driver, but were given this chance with the other driver's insurance carrier. Thus this effort by these petitioners is a far cry from the obvious legislative intent of the Direct Action Statute and of the Lands Act.

The Lands Act's history shows that it does not transport all local law to the Shelf simply where "not inconsistent"

with federal law but only where no federal law exists and state law therefore is needed to fill the "gaps" or "voids" *and* where state law is applicable. In a ship collision case on the high seas there is no vacuum to be filled due to the presence of the general maritime law, fully adequate in itself. There is no need to review again or expound upon the obvious distinction recognized by this Court in *Rodrigue*.

CONCLUSION

WHEREFORE, Respondent prays that the Petition for Writ of Certiorari be denied, presenting as it does no question of conflict with the decision of this Court in *Rodrigue*, and presenting no substantial question of federal law not already resolved against Petitioners in *Rodrigue*.

Respectfully submitted,

George W. Renaudin

GEORGE W. RENAUDIN
Counsel for Respondent

Of Counsel:

DAVID B. CONNERY, JR.
ROYSTON RAYZOR & COOK
877 San Jacinto Building
Houston, Texas 77002

PROOF OF SERVICE

I, George W. Renaudin, the counsel of record for Respondent, being a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Opposition to the Petition for Writ of Certiorari upon all parties required to be served by mailing copies thereof, first class, postage prepaid, to counsel for Petitioners, Sweeny J. Doehring, Esq. and Joseph Newton, Esq. at their offices in the Bank of the Southwest Building, Houston, Texas, 77002, on this 7 day of January, 1970.

George W. Renaudin

APPENDIX A

CONVENTION ON THE CONTINENTAL SHELF

Article 1

For the purpose of these articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Article 2

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

2. The rights referred to in paragraph 1 of this article are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State.

3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

4. The natural resources referred to in these articles consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms

which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 3

The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters.

Article 4

Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipe lines on the continental shelf.

Article 5

1. The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication.

2. Subject to the provisions of paragraphs 1 and 6 of this article, the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources, and to establish safety zones around such installations and devices and to take in those zones measures necessary for their protection.

3. The safety zones referred to in paragraph 2 of this article may extend to a distance of 500 metres around the installations and other devices which have been erected, measured from each point of their outer edge. Ships of all nationalities must respect these safety zones.

4. Such installations and devices, though under the jurisdiction of the coastal State, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal State.

5. Due notice must be given of the construction of any such installations, and permanent means for giving warning of their presence must be maintained. Any installations which are abandoned or disused must be entirely removed.

6. Neither the installations or devices, nor the safety zones around them, may be established where interference may be caused to the use of recognized sea lanes essential to international navigation.

7. The coastal State is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.

8. The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published.

Article 6

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

3. In delimiting the boundaries of the continental shelf, any lines which are drawn in accordance with the principles set out in paragraphs 1 and 2 of this article should be defined with reference to charts and geographical features as they exist at a particular date, and reference should be made to fixed permanent identifiable points on the land.

Article 7

The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil.